

## Applicant Initiated Interview Request Form

Application No.: 10/700,803 First Named Applicant: Basu  
Examiner: G. Gauthier Art Unit: 2614 Status of Application: Pending

### Tentative Participants:

(1) Richard Lyon, Reg. No. 37,385 (2) Examiner G. Gauthier  
(3) \_\_\_\_\_ (4) \_\_\_\_\_

Proposed Date of Interview: 8/5/08 Proposed Time: 2:00PM (EDT) (AM/PM)

### Type of Interview Requested:

(1) ☒ Telephonic (2) ☐ Personal (3) ☐ Video Conference

Exhibit To Be Shown or Demonstrated: ☐ YES ☒ NO

If yes, provide brief description: \_\_\_\_\_

## Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>Rejection (101)</u>	<u>1,3-28,38-40</u>	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Continuation Sheet Attached

### Brief Description of Arguments to be Presented:

(See Attached Agenda)

An interview was conducted on the above-identified application on \_\_\_\_\_.

### NOTE:

This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

[Signature], Reg. No. 37,385  
(Applicant/Applicant's Representative Signature)

\_\_\_\_\_  
(Examiner/SPE Signature)

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

*If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*

## AGENDA FOR EXAMINER INTERVIEW FOR S/N 10/700,803

The following arguments are what I propose presenting in the next step in the prosecution. I believe the issue boils down to an interpretation of the specification as it relates to 35 USC 101.

### a) Rejection of Claims 38-40 Under 35 USC §101

Claims 38-40 were rejected under 35 USC §101 as allegedly being directed to non-statutory subject matter. More particularly, it was stated that the disclosed meaning of what the claimed computer readable storage medium may consist of, includes a modulated data signal. The applicant respectfully disagrees.

The Examiner points to the specification at Page 9, lines 6-27, in support of the contention that the claimed computer readable storage medium is defined as including a "modulated data signal", which is deemed to be non-statutory subject matter. However, this part of the specification clearly indicates that a modulated data signal is classified as a computer-readable communication medium, not a storage medium. Specifically, the cited portion of the specification states:

"By way of example, and not limitation, **computer readable media may comprise computer storage media and communication media**. Computer storage media includes both volatile and nonvolatile, removable and non-removable media implemented in any method or technology for storage of information such as computer readable instructions, data structures, program modules or other data. **Computer storage media includes, but is not limited to, RAM, ROM, EEPROM, flash memory or other memory technology, CD-ROM, digital versatile disks (DVD) or other optical disk storage, magnetic cassettes, magnetic tape, magnetic disk storage or other magnetic storage devices**, or any other medium which can be used to store the desired information and which can be accessed by computer 110. **Communication media typically embodies computer readable instructions, data structures, program modules or other data in a modulated data signal such as a carrier wave or other transport mechanism and includes any information delivery media**. The term "modulated data signal" means a signal that has one or more of its characteristics set or changed in such a manner as to encode information in the signal. By way of example, and not limitation, communication media includes wired media such as a wired network or direct-wired connection, and wireless media such as acoustic, RF, infrared and other wireless media. Combinations of the any of the above should also be included within the scope of computer readable media".

Thus, computer-readable storage media is clearly distinguished from computer-readable communication media in the foregoing description. Further, it is stated that a modulated signal is computer-readable communication media. As such, it is not the claimed computer-readable storage media.

As the rejected claims are directed to computer-readable storage media, which does not include a modulated signal, these claims are patentable subject matter under 35 USC §101. Therefore, it is respectfully requested that the rejection of Claims 38-40 be reconsidered.

### b) Rejection of Claims 1 and 3-28 Under 35 USC §101

Claims 1 and 3-28 were rejected under 35 USC §101 as allegedly being directed to non-statutory subject matter. More particularly, it was stated that these claims are a process run by the computer-readable medium described in Claim 38. The applicant respectfully disagrees.

First it is pointed out that there is no connection between Claims 1 and 3-28, and Claim 38. Claims 1 and 3-28 represent a completely separate claim set. In addition, it is the applicant's position that the process recited in Claims 1 and 3-28 is patentable subject matter.

Generically, the preamble of independent Claim 1 reads:

"A computer-implemented process for ..., comprising using a computer to perform the following process actions:"

Thus, the applicant is claiming a process implemented on a computer where the actions of the process are performed using the computer. This is statutory subject matter.

As stated in the MPEP (see Section 2106 (IV)(B)(1)(a) at Page 2100-13, Rev. 2, May 2004):

"Computer programs are often recited as part of a claim. Office personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. **The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program.**"

Clearly, in the case of the rejected claims, the actions are being claimed as part of a statutory process—namely a process with actions that are performed using a computer. Accordingly, given that Claims 1 and 3-28 are directed toward statutory subject matter, it is respectfully requested that the rejections be reconsidered.